

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 19-1906V

Filed: August 1, 2023

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MICAH PARTEN and JILLIAN PARTEN, *parents of P.P., a minor*,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

* * * * *

Ronald Homer, Esq., Conway Homer P.C., Boston, MA, for petitioner.
Mitchell Jones, Esq., US Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

Roth, Special Master:

On December 17, 2019, Micah and Jillian Parten [“petitioners”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on behalf of their minor daughter, P.P. Petitioners allege that P.P. developed a neurological demyelinating injury after receiving diphtheria-tetanus-acellular pertussis (“DTaP”), inactivated polio (“IPV”), haemophilus influenzae (“Hib”), pneumococcal conjugate (“PCV13”), and rotavirus vaccines on October 26, 2018. On April 20, 2021, petitioners filed an amended petition, changing the injury alleged to post-vaccine encephalopathy. Stipulation, filed August 1, 2023, at ¶¶ 1-4. Respondent denies that any of the aforementioned immunizations caused P.P.’s injury. Stipulation at ¶ 6.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Nevertheless, the parties have agreed to settle the case. On August 1, 2023, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

Respondent agrees to issue the following payment:

A lump sum of \$74,000.00 in the form of a check payable to petitioners, as guardians/conservators of P.P.'s estate. This amount represents compensation for all damages that would be available under § 300aa-15(a).

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/ Mindy Michaels Roth
Mindy Michaels Roth
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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No. 19-1906V (ECF)
Special Master Roth

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4. Petitioners allege that P.P. suffered from post-vaccine encephalopathy a result of the October 26, 2018 vaccinations.¹ Petitioners further allege that P.P. experienced the residual effects of this condition for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on P.P.'s behalf as a result of any alleged injuries.

6. Respondent denies that the vaccines caused P.P.'s alleged injuries, or any other injury or condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioners have filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of **\$74,000.00**, in the form of a check payable to petitioners, as guardians/conservators of P.P.'s estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioners have filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

¹ In their original petition, filed on December 17, 2019, petitioners alleged that P.P. suffered a "neurological demyelinating injury" as a result of her vaccinations. They filed an amended petition on April 20, 2021, changing the alleged injury to "post-vaccine encephalopathy."

10. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for P.P.'s benefit as contemplated by a strict construction of 42 U.S.C. §§ 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. §§ 300aa-15(g) and (h).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of P.P.'s estate under the laws of the State of Oklahoma. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of P.P.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of P.P.'s estate at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of P.P. upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities, and as legal representatives of P.P., on behalf and themselves, P.P., and P.P.'s heirs, executors, administrators, successors or assigns, do forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 *et seq.*, on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of P.P. resulting from, or alleged to have resulted from, the vaccinations administered on June 26, 2018, August 2, 2018, August 22, 2018, and October 26, 2018, as alleged by petitioners in a petition filed on December 17, 2019, and an amended petition for vaccine compensation filed on or about April 20, 2021, in the United States Court of Federal Claims as petition No. 19-1906V.

15. If P.P. should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the

parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Hep B, DTaP, IPV, Hib, PCV, and/or rotavirus vaccines caused P.P.'s alleged injuries, or any other injury or condition.

18. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of P.P.

END OF STIPULATION

Respectfully submitted,

PETITIONER:



MICAH PARTEN

PETITIONER:



JILLIAN PARTEN

**ATTORNEY OF RECORD
FOR PETITIONERS:**

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George R. Grimes - Digitally signed by George R.
Grimes -S14
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Date: 2023.07.18 16:30:21 -04'00'

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Dated: 08/01/2023